

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOMINIC LEMMO,

Plaintiff(s),

*-against-*ARCHDIOCESE OF NEW YORK and CHURCH OF OUR
SAVIOUR,

Defendant(s).

Index No. _____

Summons

Date Index No. Purchased: _____

September 12, 2019

To the above named Defendant(s)

Archdiocese of New York
1101 First Avenue, New York, New York

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is one or more Defendant resides in New York County
which is which is located in New York County, New York

Dated: New York, New York

September 12, 2019

SIMMONS HANLY CONROY LLC

by 

Paul J. Hanly, Jr.

Attorneys for Plaintiff

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SUPREME COURT OF THE STATE OF NEW YORK
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*-against-*ARCHDIOCESE OF NEW YORK and CHURCH OF OUR
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September 12, 2019

To the above named Defendant(s)

Church of Our Saviour
2317 Washington Avenue, Bronx, New York

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DOMINIC LEMMO,

Plaintiff,

v.

ARCHDIOCESE OF NEW YORK and CHURCH OF OUR
SAVIOUR,

Defendants.

Index No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Dominic Lemmo, by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against the Archdiocese of New York and Church of Our Saviour, and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that each Defendant resides in New York.

2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction.

3. Venue for this action is proper in the County of New York pursuant to CPLR 503 in that one or more Defendant resides in this County.

PARTIES

4. Plaintiff Dominic Lemmo ("Plaintiff") is an individual residing in Westchester County, New York.

5. Defendant Archdiocese of New York is a religious corporation organized pursuant to the Religious Corporations Law, with its principal office at 1101 First Avenue, New York, New York in New York County, New York. The Archdiocese of New York is

a Roman Catholic archdiocese. At all relevant times, the Archdiocese of New York created, oversaw, supervised, managed, controlled, directed and operated parishes or churches of the Archdiocese of New York, such as Church of Our Saviour.

6. Defendant Church of Our Saviour is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 2317 Washington Avenue, Bronx, Bronx County, New York. At all relevant times, Church of Our Saviour is and has been a Roman Catholic Church or parish within and under the authority of the Archdiocese of New York. At all relevant times, the Archdiocese of New York created, oversaw, supervised, managed, controlled, directed and operated Church of Our Saviour.

FACTS COMMON TO ALL CLAIMS

7. Plaintiff and his family were parishioners of and attended Church of Our Saviour when he was a minor. Plaintiff and his family were parishioners of the Archdiocese of New York. When Plaintiff was a minor, he was also a student of the Church of Our Saviour school.

8. During the times relevant to the allegations set forth herein, Monsignor G. Howard Moore was a priest assigned as a pastor or parochial vicar by Defendant Archdiocese of New York to Church of Our Saviour. Monsignor Moore died in 1977.

Abuse by Monsignor Moore

9. Through his positions at, within, or for the Defendants, Monsignor Moore was put in direct contact with Plaintiff, a parishioner of Church of Our Saviour.

10. In approximately 1961, when Plaintiff was approximately twelve years of age, Plaintiff served as an altar boy at Church of Our Saviour. From approximately 1961 through approximately 1962, when Plaintiff was approximately twelve and thirteen years of age, Monsignor Moore would approach Plaintiff and direct him to come into his office at the Church of Our Saviour rectory, which adjoined the church.

11. During the periods in which Monsignor Moore approached the Plaintiff,

other employees, agents, or servants of Church of Our Saviour were present and knew or should have known that Monsignor Moore was making contact with the Plaintiff, who was then a minor, approximately twelve and thirteen years of age.

12. At the rectory, Monsignor Moore used his position of authority and trust over Plaintiff, who was then approximately twelve or thirteen years of age, to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff. Monsignor Moore sexually assaulted, abused, and/or had sexual contact with the Plaintiff at the rectory approximately thirty times from approximately 1961 through approximately 1962.

13. At about the time Monsignor Moore was sexually assaulting, sexually abusing, and/or having sexual contact with the Plaintiff, Defendants Archdiocese of New York and Church of Our Saviour knew or should have known that Monsignor Moore was engaging in sexually inappropriate conduct with minor children parishioners of Church of Our Saviour.

Defendants' Responsibility for the Abuse Committed by Monsignor Moore

14. At all times material hereto, Monsignor Moore was under the management, supervision, employ, direction and/or control of Defendants Archdiocese of New York and Church of Our Saviour.

15. Monsignor Moore used his position at, within, or for, Defendants Archdiocese of New York and Church of Our Saviour and the implicit representations made by them about his character that accompanied that position, to gain Plaintiff's trust and confidence and to create opportunities to be alone with, and touch, Plaintiff.

16. Defendants Archdiocese of New York and Church of Our Saviour knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Monsignor Moore who sexually abused Plaintiff.

17. Defendants Archdiocese of New York and Church of Our Saviour had the responsibility to manage, supervise, control and/or direct priests assigned to Church of

Our Saviour, and specifically, had a duty not to aid pedophiles such as Monsignor Moore, by assigning, maintaining and/or appointing them to positions with access to minors.

18. Monsignor Moore was assigned by Defendant Archdiocese of New York to serve as a priest of Church of Our Saviour and used his authority as such to entice, take control of, and then sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff while Plaintiff was a minor.

19. Defendants had a duty to the Plaintiff to supervise children at their church and to ensure that pedophiles did not use the church as an opportunity to approach and groom vulnerable children. Defendants knew or should have known that Monsignor Moore used the church to approach minor children, including the Plaintiff, to entice them, and to form an acquaintance that could be, and was, used to provide opportunities for sexual abuse.

Consequences of the Abuse

20. Plaintiff suffered personal physical and psychological injuries and damages as a result of Monsignor Moore's actions, as well as other damages related thereto, as a result of the childhood sexual abuse he sustained.

21. As a direct result of the Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Monsignor Moore's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

CAUSES OF ACTION**FIRST CAUSE OF ACTION****Negligent Hiring/Retention/Supervision/Direction**

22. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 21 as if fully set forth herein.

23. Defendants Archdiocese of New York and Church of Our Saviour owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence of Monsignor Moore, in his role as teacher, priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Monsignor Moore did not use his assigned position to injure minors by sexual assault, abuse, or sexual contact with minors.

24. The sexual abuse of children by adults, including priests and teachers, is foreseeable.

25. Defendants Archdiocese of New York and Church of Our Saviour at all relevant times held Church of Our Saviour to be a safe place for minors to attend, and their priests as individuals to whom it was safe to entrust the care of children. Defendants Archdiocese of New York and Church of Our Saviour entered into an express and/or implied duty to provide a reasonably safe environment for Plaintiff and assumed the duty to protect and care for him.

26. Defendants Archdiocese of New York and Church of Our Saviour negligently hired, retained, directed, and supervised Monsignor Moore when they knew or should have known that Monsignor Moore posed a threat of sexual abuse to children.

27. Defendants Archdiocese of New York and Church of Our Saviour knew or should have known of Monsignor Moore's propensity for the conduct which caused Plaintiff's injuries prior to, or about the time of, the injuries' occurrence.

28. Monsignor Moore sexually assaulted, sexually abused and/or had sexual contact with Plaintiff on Defendants' premises, including the rectory and church at

Church of Our Saviour.

29. Defendants Archdiocese of New York and Church of Our Saviour were put on notice of Monsignor Moore's improper and inappropriate actions with minors.

30. Defendants Archdiocese of New York and Church of Our Saviour were negligent in failing properly to supervise Monsignor Moore.

31. Defendants Archdiocese of New York and Church of Our Saviour were negligent in failing to supervise the rectory at Church of Our Saviour in order to prevent pedophiles from using it as an opportunity meet, attract, groom, sexually assault and sexually abuse children.

32. At all times material hereto, Defendants Archdiocese of New York and Church of Our Saviour's actions were willful, wanton, malicious, reckless, negligent, and/or outrageous in their disregard for the rights and safety of Plaintiff.

33. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

34. By reason of the foregoing, the Defendants Archdiocese of New York and Church of Our Saviour are liable to the Plaintiff, jointly, severally and/or in the alternative, for compensatory damages, and for punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION
Negligence/Gross Negligence

35. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 21 as if fully set forth herein.

36. Defendants Archdiocese of New York and Church of Our Saviour knew, or were negligent in not knowing, that Monsignor Moore posed a threat of sexual abuse to children.

37. The acts of Monsignor Moore described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his

employment, appointment, and/or agency with the Defendants Archdiocese of New York and Church of Our Saviour.

38. Defendants Archdiocese of New York and Church of Our Saviour owed Plaintiff, at the relevant times a minor, a duty to protect him from Monsignor Moore's sexual deviancy, both prior to and/or subsequent to Monsignor Moore's misconduct.

39. Defendants' willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

40. Defendants Archdiocese of New York and Church of Our Saviour:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;
- b. failed adequately to supervise the activities of Monsignor Moore;
- c. failed adequately to supervise the rectory;
- d. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and
- e. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

41. At all times material hereto, with regard to the allegations contained herein, Monsignor Moore was under the direct supervision, employ and/or control of Defendants Archdiocese of New York and Church of Our Saviour.

42. At all times material hereto, Defendants Archdiocese of New York and Church of Our Saviour's actions were willful, wanton, malicious, reckless, negligent, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to

conduct equivalent to criminality.

43. As a direct and/or indirect result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

44. By reason of the foregoing, Defendants Archdiocese of New York and Church of Our Saviour, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION

Breach of Non-Delegable Duty

45. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 21 as if fully set forth herein.

46. Plaintiff, when he was a minor, was placed in the care and supervision of the Defendants Archdiocese of New York and Church of Our Saviour for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in educational, youth and recreational activities. There existed a non-delegable duty of trust between Plaintiff and Defendants Archdiocese of New York and Church of Our Saviour.

47. Plaintiff was a vulnerable child when placed within the care of Defendants Archdiocese of New York and Church of Our Saviour.

48. As a consequence, Defendants Archdiocese of New York and Church of Our Saviour were in the best position to prevent Plaintiff's abuse, to learn of Monsignor Moore's repeated sexual abuse of Plaintiff, and to stop it.

49. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants Archdiocese of New York and Church of Our Saviour, Defendants breached their non-delegable duty to Plaintiff.

50. At all times material hereto Monsignor Moore was under the supervision, employ, direction and/or control of the Defendants Archdiocese of New York and Church of Our Saviour.

51. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer injuries and damages described herein.

52. By reason of the foregoing, Defendants Archdiocese of New York and Church of Our Saviour are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

FOURTH CAUSE OF ACTION

Breach of Fiduciary Duty

53. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 21 as if fully set forth herein.

54. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Archdiocese of New York and Church of Our Saviour. This relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of the Defendants as a parishioner at Church of Our Saviour and as a student of the school at Church of Our Saviour. This entrustment of the Plaintiff to the care and supervision of the Defendants, while the Plaintiff was a minor child, required these Defendants Archdiocese of New York and Church of Our Saviour to assume a fiduciary relationship and to act in the best interests of the Plaintiff and to protect him while he was a minor and vulnerable child,

55. Pursuant to their fiduciary relationship, Defendants Archdiocese of New York and Church of Our Saviour were entrusted with the well-being, care, and safety of Plaintiff.

56. Pursuant to their fiduciary relationship, Defendants Archdiocese of New York and Church of Our Saviour assumed a duty to act in the best interests of Plaintiff.

57. Defendants Archdiocese of New York and Church of Our Saviour breached their fiduciary duties to Plaintiff.

58. At all times material hereto, Defendants Archdiocese of New York and

Church of Our Saviour's actions and/or inactions were willful, wanton, malicious, reckless, negligent, and outrageous in their disregard for the rights and safety of Plaintiff.

59. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer injuries and damages described herein.

60. By reason of the foregoing, Defendants Archdiocese of New York and Church of Our Saviour, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

61. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 21 as if fully set forth herein.

62. As described aforesaid, the actions of Defendants Archdiocese of New York and Church of Our Saviour, their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

63. Defendants Archdiocese of New York and Church of Our Saviour's actions endangered Plaintiff's safety and caused him to fear for his own safety.

64. As a direct and proximate result of Defendants Archdiocese of New York and Church of Our Saviour's actions, which included but were not limited to, negligent and/or grossly negligent conduct, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

65. By reason of the foregoing, Defendants Archdiocese of New York and Church of Our Saviour, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION

Breach of Duty *in Loco Parentis*

66. Plaintiff repeats and realleges each and every allegation set forth in

paragraphs 1 through 21 as if fully set forth herein.

67. While he was a minor, Plaintiff was entrusted by his parents to the control of the Defendants Archdiocese of New York and Church of Our Saviour for the purposes of *inter alia*, providing Plaintiff with an education, appropriate guidance and an opportunity to enjoy youth activities under responsible adult supervision. During the times that Plaintiff was at Church of Our Saviour, he was under the supervision and control of the Defendants Archdiocese of New York and Church of Our Saviour. These Defendants owe – and owed -- a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

68. Defendants Archdiocese of New York and Church of Our Saviour breached their duty to act *in loco parentis*.

69. At all times material hereto, Defendants Archdiocese of New York and Church of Our Saviour's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

70. As a direct result of Defendants Archdiocese of New York's and Church of Our Saviour's conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

71. By reason of the foregoing, Defendants Archdiocese of New York and Church of Our Saviour, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages, and for punitive damages, together with interest and costs.

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;

- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: September 12, 2019
New York, New York

Respectfully Submitted,

/s/ Paul J. Hanly, Jr.
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